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OFFICE OF PETITIONS

In re Application of

Peffly, et al.

Application No. 10/758,656

Filed: January 15, 2004

Attorney Docket No. 9144

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: DECISION DISMISSING
: PETITION UNDER 37 CFR 1.55(c)

This is a decision on the petition under 37 CFR 1.55(c), filed September 20, 2006, requesting that a priority claim to WO application publication number 2003/105793, international filing date June 10, 2003, be entered.

The petition is **DISMISSED**.

A petition under 37 CFR 1.55(c) to accept an unintentionally delayed claim for priority requires:

- (1) the non-provisional application claiming the benefit of an earlier filing date must be filed on or after November 29, 2000;
- (2) the claim submitted with the petition must identify the prior foreign application for which priority is claimed, as well as any foreign application for the same subject matter and having a filing date before that of the application for which priority is claimed, by the application number, country, and filing date, and be included either in an oath or declaration (37 CFR 1.63(c)(2)) or in an Application Data Sheet (37 CFR 1.76(b)(6));
- (3) the surcharge as set forth in 37 CFR 1.17(t);
- (4) a statement that the entire delay between the date the claim was due under 37 CFR 1.55(a)(1) and the date the claim was filed was unintentional. (The Commissioner may require additional information where there is a question whether the delay was unintentional.), and
- (5) the above-identified nonprovisional application must be filed within 12 months of the filing date of the foreign application.

The petition lacks item (2).

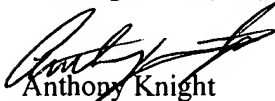
The priority claim to WO application publication number 2003/105793 is made in an Application Data Sheet (ADS). The ADS is defective for the following reasons: 1) it cites the filing date for the foreign application as December 24, 2003, but the filing date is actually June 10, 2003; 2) it fails to mention priority to provisional application 60/441,066 to which non-provisional application 10/758,656 made a priority claim on filing, 3) it seeks to claim benefit under 35 U.S.C. 119(e) to the non-provisional application 10/464,711 which is improper because 35 U.S.C. 119(e) only applies to claiming benefit to provisional applications, and 4) the ADS does not specify the application number but instead references the publication number.

It is further noted that the priority claim to non-provisional application 10/464,171 made in the first sentence of the specification is defective in that no relationship between nonprovisional application 10/758,656 and 10/464,171 is stated. 37 CFR 1.78(a)(2)(i) requires that any nonprovisional application claiming the benefit of one or more prior-filed co-pending nonprovisional applications must contain or be amended to contain references to each such prior-filed application, identifying it by application number (consisting of the series code and serial number) and indicating the relationship of the applications. The relationship between the applications is whether the subject application is a continuation, divisional, or continuation-in-part of a prior-filed nonprovisional application. An example of a proper benefit claim is: "This application is a continuation of Application No. 10/---, filed---." A benefit claim that merely states: "This application claims the benefit of Application No. 10/---, filed---," does not comply with 37 CFR 1.72(a)(2)(i) since the proper relationship, which includes the type of continuing application, is not stated. Also, the status of each nonprovisional parent application (if it is patented or abandoned) should also be indicated, following the filing date of the parent nonprovisional application. *See* MPEP Section 201.11, Reference to Prior Nonprovisional Applications. Accordingly, a petition under 37 CFR 1.78(a)(3) must be filed in order to recognize priority to application 10/464,171.

The surcharge for the petition in the amount of \$1370.00 will be charged to deposit account 16-2480.

A petition under 37 CFR 1.78(a)(3) making a proper priority claim to application 10/464,171 and a renewed petition under 37 CFR 1.55 should be filed that is accompanied by an Application Data Sheet that addresses the deficiencies noted above.

Telephone inquiries concerning this decision should be directed to Petitions Attorney Kenya A. McLaughlin at (571) 272-3222.


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Office of Petitions